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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/723,508	11/28/2000	Glen T. Anderson	680.0037USU	4904

7590 04/29/2002

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EXAMINER

YU, GINA C

ART UNIT	PAPER NUMBER
1617	5

DATE MAILED: 04/29/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Applicant No.</b>	<b>Applicant(s)</b>	
	09/723,508	ANDERSON, GLEN T.	
	<b>Examiner</b> Gina C Yu	<b>Art Unit</b> 1619	

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 05-17-2001.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-20 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-20 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
 If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

## DETAILED ACTION

Receipt is acknowledged of Amendment filed on January 25, 2002. Claims 1-20 are pending. Claim rejections under 35 U.S.C. § 112 are withdrawn in view of claim amendments by applicants. Claim rejection under § 103 is withdrawn in view of the invalidity of the prior art (Ishida et al.). New rejections are prompted by disclosure submitted by applicants.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-20 are rejected under 35 U.S.C. § 103(a) as obvious over Rouquet et al. (U.S. Pat. No. 6,258,345 B1) in view of Akihiro (JP 11158036, abstract).

Rouquet et al. describe a topical composition comprising crosslinked elastomeric organopolysiloxane and spherical polymeric particles with a particle diameter of less than 10 microns in a liquid fatty phase. See abstract. Employing each of the elastomeric organopolysiloxane and the spherical particles in the amount of 2-20 % of the total weight of the composition, is disclosed in col. 3, lines 46 – 58, which meets instant claims 11-13. Nylon or polydimethylsiloxane particles are used, which meets claim 14. See col. 2, lines 37 – 54. Claim 16 is met by the disclosure of the additional ingredients in col. 5, lines 15 – 38. The vehicles of the composition in claim 17 and the method of using the invention in claims 18-20 are described in Examples.

Akihiro discloses cosmetic composition comprising 0.5- 50 wt % of titanium oxide having a primary particle size of 0.001-0.15 microns and a secondary particle size of 0.6

– 2.0 microns and 0.3 – 70 wt % of silicone elastomer powder. See abstract. The invention is said to provide coverage on skin texture and wrinkles. English translation of the full patent will be provided upon availability. While the reference does not show the particle size distribution of about 24 microns, examiner views that it would have been obvious for a routineer to optimize the particle size range of the particles present in the composition. For example, it would be possible to achieve particle size distribution of 24 microns when it takes one single particle having particle size of 24.001 microns present in the composition of Akhiro.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the composition of Rouquet by substituting the particles with particles having specific particle size distribution as taught by Akihiro because of the expectation of successfully producing a cosmetic composition with enhanced coverage.

#### ***Response to Arguments***

Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

No claims are allowed.

Applicant's submission of an information disclosure statement under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p) on January 11, 2002 prompted the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS**

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**MADE FINAL.** See MPEP § 609(B)(2)(i). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 703-308-3951.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Minna Moezie can be reached on 703-308-4612. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4242 for regular communications and 703-308-4242 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1234.

Gina C. Yu  
Patent Examiner  
April 17, 2002

RUSSELL TRAVERS  
PRIMARY EXAMINER  
GROUP 1200  
